

Frontier Communications of the Carolinas)	
LLC,)	
)	
Complainant,)	
)	
v.)	File No. EB-13-MD-007;
)	Docket No. 14-213
)	
Duke Energy Progress, Inc.,)	
)	
Respondent.)	
)	

Pursuant to the Bureau's February 12, 2015 Briefing Order, Respondent Duke Energy Progress, Inc. ("DEP") serves the following interrogatories, requests for production of documents, and requests for admission upon Complainant Frontier Communications of the Carolinas LLC ("Frontier").

1. The "1978 Agreement" means the April 28, 1978 joint use agreement between Carolina Power & Light Company and Western Carolina Telephone Company.

2. The "1981 Agreement" means the January 1, 1981 joint use agreement between Carolina Power & Light Company and General Telephone Company of the Southeast.

3. "Joint Use Agreements" refers jointly to the April 28, 1978 joint use agreement between Carolina Power & Light Company and Western Carolina Telephone Company and the January 1, 1981 joint use agreement between Carolina Power & Light Company and General Telephone Company of the Southeast.

4. “Document” refers to anything contemplated by Fed. R. Civ. P. 34, and includes all media by which information or data may be stored or obtained, including, without limitation, books, pamphlets, letters, correspondence, telegrams, reports, memoranda, notes, calendars, records, studies, extracts, working papers, spreadsheets, budgets, charts, papers, indices, tapes, data sheets or cards, minutes, transcriptions, computer disks, diskettes, e-mail, instant messages, other electronic media, and any other written, printed, reported, transcribed, punched, taped or typed materials, movies or other photographic matter, however produced or reproduced, and all mechanical or electronic sound recordings or transcripts thereof, in your possession, custody or control.

5. “Explain in detail” and/or “identify” shall be interpreted to require that you provide all the facts within your knowledge regarding the subject matter at issue in the interrogatory, document request and/or request for admission including, but not limited to, relevant dates, and the identity of every individual involved and/or that has personal knowledge of the relevant facts, including the full name, address, and telephone number of each entity and/or individual whose identity is responsive to a request, as well as the name, address, and telephone number of any individual’s employer.

6. “Relating to” means relating to, referring to, concerning, regarding, describing, discussing, reflecting, mentioning, constituting and/or supporting, directly and/or indirectly and each of these terms should be construed as meaning each and every one of these terms.

7. “You,” “your,” “Frontier,” refer to the Complainant in this action, Frontier Communications of the Carolinas LLC, and any employee, agent, business, employer or other entity or person acting on behalf of Frontier or for which Frontier acted on behalf of, and any predecessor or successor in interest of Frontier.

INTERROGATORIES

1. Explain in detail why Frontier asserts that DEP's calculation that "Frontier has saved in excess of \$49.3 million (expressed in today's dollars) in up-front make ready costs by virtue of the built-to-suit nature of the joint use agreements" is inaccurate. *See* DEP Response to Pole Attachment Complaint at ¶ 74; Frontier's Reply at 28. Describe all analysis or cost studies performed by Frontier that support such a position, and identify the time frame during which such analysis or cost study was performed.

2. Explain in detail why Frontier contends that "Over the past decades, it is safe to say that Frontier has paid far more in additional rent than it has saved in make-ready costs." Frontier's Reply at 28-29. Describe all analysis or cost studies performed by Frontier that support such a position, and identify the time frame during which such analysis or cost study was performed.

3. Describe what analysis or cost studies Frontier has performed, if any, to determine the value of the requirement in both Joint Use Agreements that "[f]or new lines the Owner will obtain suitable right of way for both parties on joint poles insofar as practicable." Identify the time frame in which such analysis or cost studies were performed.

4. Identify all data relied upon by Susan Knowles in testifying that it was not "realistic" to "assume that no entity would ever have requested a taller pole before Frontier." Reply Affidavit of Susan L. Knowles, Exh. A to Frontier's Reply, at ¶ 17. For example, identify, by year, when Frontier or its predecessors brought the DEP poles on which Frontier currently has attachments into joint use.

5. Was Frontier ever required to apply for a permit prior to making attachments to any joint use pole owned by DEP? If your answer is “yes,” please state the number of DEP poles for which Frontier was required to submit a permit application.

6. Did Frontier ever pay make-ready costs (such as pole change out, rearrangement, or other associated costs) in order to bring a new pole into joint use under the Agreement? If so, for each and every pole, please identify the date, amount and circumstances of such payment.

7. Identify the following: (a) the average amount of usable space occupied (either actually or constructively) by Frontier on DEP’s poles; (b) the average number of Frontier attachments on each DEP pole; (c) the average wind/weight loading created by Frontier’s attachments on each DEP pole; and (d) the average height of Frontier’s highest attachment on each DEP pole.

8. Were the annual rental rates set forth in Article XII.A. of the 1978 Agreement just and reasonable? If your answer is no, please explain in detail all reasons you contend that these rates were not just and reasonable, and what analysis or investigation Frontier performed to reach such a conclusion.

9. Identify by year, for the past 30 years, your “average unit in-place cost of 40 foot poles,” as that phrase is used in Article XII.G. of the 1978 Agreement and Article XIII.F. of the 1981 Agreement.

10. Identify your annual pole cost (bare pole cost x annual carrying charge percentage) as calculated under the FCC’s old telecom rate formula (in other words, excluding the “0.66” multiplier) for 2010- 2014.

11. Were the rates and rate methodologies Frontier contends its predecessors successfully (and permanently) negotiated in 1996 just and reasonable? If your answer is no, please explain in detail all reasons you contend these rates were not just and reasonable, and what analysis or investigation Frontier performed to reach such a conclusion.

12. Describe what analysis or cost studies Frontier has performed, if any, to calculate the make-ready cost Frontier avoided by virtue of the 1978 Agreement, the 1981 Agreement, or any predecessor joint use agreements. Identify the time frame in which such analysis or cost studies were performed.

13. Describe what analysis or cost studies Frontier has performed, if any, to determine the value associated with its standard space allocation under the 1978 Agreement and the 1981 Agreement. Identify the time frame in which such analysis or cost studies were performed.

14. Describe what analysis or cost studies Frontier has performed, if any, to determine the value to Frontier of the liability sharing provision and reciprocal indemnity provisions in Article XVIII of the 1978 Agreement and Article XIX of the 1981 Agreement. Identify the time frame in which such analysis or cost studies were performed.

15. Describe what analysis or cost studies Frontier has performed, if any, to calculate the value of the contractual right to remain indefinitely attached to DEP's poles as set forth in Article XVI of the 1978 Agreement and XVII of the 1981 Agreement, notwithstanding termination of the Agreements without cause. Identify the time frame in which such analysis or cost studies were performed.

16. Identify the anticipated cost to Frontier of removing all attachments to DEP poles and either deploying its entire network underground or building a redundant network of poles (whichever amount is lower).

17. Other than imbalance in joint use pole ownership, does Frontier contend that any other piece of data or information supports its claim that it was in an inferior bargaining position when it executed the Joint Use Agreements or the alleged 1996 Parol Agreement? If your answer is “yes,” please identify such data or information.

18. Please state, by year, the amount of money Frontier has reserved in connection with the joint use rental dispute under the Agreement for 2010, 2011, 2012, 2013, and 2014.

REQUESTS FOR PRODUCTION

1. Please produce all documents relating to Interrogatories 1-18 and/or Frontier’s responses thereto.

2. Please produce all of Frontier’s joint use agreements with electric companies (e.g. investor owned utilities, cooperatives, municipalities, etc.) other than DEP and its affiliates pursuant to which Frontier and an electric company attached to each other’s poles in North Carolina and/or South Carolina between 2010 and 2014.

3. Please produce all documents (such as invoices and remittances) evidencing rates that electric companies and Frontier charged and paid for attachments to each other’s poles in North Carolina pursuant to joint use agreements between 2010 and 2014.

4. Please produce all of Frontier’s pole license agreements with telecommunications carriers, cable television companies, and internet service providers pursuant to which those

entities made attachments to Frontier's poles in North Carolina and/or South Carolina between 2010 and 2014.

5. Please produce all documents relating to Frontier's calculation of the joint use rental rates under the Joint Use Agreements from 2010 through 2014.

6. If your answer to Interrogatory No. 5 was in the affirmative, please produce all permit applications submitted by Frontier and any documents reflecting the approval or denial of those applications.

7. Please produce all documents and assumptions provided to, exchanged with, prepared for, or prepared by Mr. Timothy Tardiff in connection with his declarations in this proceeding.

REQUESTS FOR ADMISSION

1. Admit that Frontier never claimed to DEP that the annual rental rate methodology under the Agreements was unjust or unreasonable until after the issuance of the FCC's Pole Attachment Order in *In the Matter of Implementation of Section 224 of the Act; a National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 (Apr. 7, 2011). If Frontier denies this allegation, please explain in detail the reasons for that denial.

2. Admit that the following are accurate calculations of the joint use rental rates for 2010 through 2014 under the rate methodologies in the 1978 and 1981 Agreements:

	1978 Agreement		1981 Agreement	
	DEP on Frontier Poles	Frontier on DEP Poles	DEP on Frontier Poles	Frontier on DEP Poles
2010	\$77.58	\$60.95	\$88.44	\$64.75
2011	\$80.72	\$63.42	\$92.02	\$67.37
2012	\$84.00	\$66.00	\$95.76	\$70.11
2013	\$86.65	\$68.08	\$98.78	\$72.32

If Frontier denies this allegation, please explain in detail the reasons for that denial.

3. Admit that the following are accurate calculations of the joint use rental rates for 2010 through 2014 under the alleged 1996 Parol Agreement:

	DEP on Frontier Poles	Frontier on DEP Poles
2010	\$45.62	\$36.05
2011	\$45.81	\$36.20
2012	\$46.77	\$36.96
2013	\$47.35	\$37.42

If Frontier denies this allegation, please explain in detail the reasons for that denial.

This 6th day of March, 2015.


Eric B. Langley
Robin F. Bromberg
Balch & Bingham LLP
1901 6th Avenue North, Suite 1500
Birmingham, Alabama 35203
Telephone: (205) 251-8100
Email: elangley@balch.com
Email: rbromberg@balch.com

Matthew G.T. Martin
Duke Energy Corporation

Associate General Counsel
410 S. Wilmington Street-PEB 20
Raleigh, NC 27601
Telephone: 919-546-7060
E-mail: Matthew.Martin@duke-energy.com

*Counsel for Respondent Duke Energy
Progress, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2015, I caused a copy of the foregoing CONSOLIDATED DISCOVERY REQUESTS to be served on the following (via the service method indicated):

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

VIA EMAIL

Christopher Killion
Lia Royle
Rosemary McEnery
Enforcement Bureau
Market Disputes Resolution Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
christopher.killion@fcc.gov
lia.royle@fcc.gov
rosemary.mcenery@fcc.gov

VIA EMAIL

David H. Solomon
Wilkinson Barker Knauer, LLP
2300 N. Street, NW, Suite 700
Washington, DC 10037
(202) 783-411
dsolomon@wbklaw.com

VIA EMAIL

Joseph J. Starsick, Jr.
Associate General Counsel
Frontier Communications
1500 MacCorkle Avenue, S.E.
Charleston, West Virginia 25314
(304) 344-7644
Joseph.Starsick@ftr.com



Robin F. Bromberg